IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.381 OF 2001

Babasaheb Appasaheb Mane)
Prisoner No.C-937511768)
Kolhapur Central Prison)
Kalamba, Kolhapur 416 007.).. APPELLANT
)(Org.Accused)

VERSUS

The State of Maharashtra).. RESPONDENT
)(Org.Complt.)

Mr.A.G.Toraskar, Advocate Appointed for the Appellant Accused.

Smt.V.R.Bhonsale, Additional Public Prosecutor, for the Respondent State.

CORAM: V.G. PALSHIKAR AND SMT.NISHITA MHATRE, JJ.

DATED: 19TH APRIL 2005

ORAL JUDGMENT : (PER MHATRE, J.)

. This Appeal has been preferred against the judgment of the Sessions Judge, Sangli passed in Sessions Case No.74 of 1999 convicting the Appellant under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life. A fine of Rs.500/- has been imposed and in default, the Appellant is directed to suffer rigorous imprisonment for three months. The Appellant has been convicted on account of his dastardly attack on his wife Vimal and his minor children Rekha, Sushma and Sagar. The wife Vimal and daughter Rekha succumbed to their injuries. The daughter Sushma, who was a child of nine years when

the incident occurred, is the star witness in this case.

2. The prosecutioni case is that the Appellant's father Appasaheb Vithoba Mane PW4 decided to sell certain lands which they owned to one Maruti Tukaram Gadade the father of PW3. Earnest money was paid for the sale of land and on the day when the possession was to be taken, it was decided to measure the land. When the sale was finalised and payment was made, besides the Appellant and his father, the victim Vimal and her brother were also present. It appears that the agreed amount was paid to Vimal. After the land measurements were taken, the people who were present on the spot including the Police Patil proceeded towards the house of PW1. They heard children screaming out from the house of the Appellant. PW1, who is the Police Patil, and PW3 rushed to the house of the Appellant. However, the door of the Appellant's house was locked and he refused to open it. Bayaji, the brother of the victim, Vimal also rushed to the house. Since the Appellant refused to open the door, all the persons went to the house of PW3. PW4 went there and informed them that he had found that the Appellant had killed his wife and ten year old daughter Rekha and had injured PW2 Sushma and Sagar his son, with a sickle. The prosecution has sought to establish that the entire episode had occurred since the Appellant was not agreeable to the sale of the

land, whereas his wife Vimal was insisting that the land should be sold. Besides injuring his family members, the Appellant then pelted stones at PW3 and his father. The injured children were removed to the hospital and the statement of daughter Sushma i.e. PW2 was recorded after six days. The Appellant was arrested and tried. The Sessions Court has found the Appellant guilty of murdering Vimal and Rekha and has convicted him and sentenced him to punishment for life and a fine of Rs.500/- on each count. The Appellant has also been convicted and punished under Section 324 and sentenced to suffer rigorous imprisonment for three months. Besides this, he has been found guilty of the offence punishable under Section 337 and has been sentenced to suffer rigorous imprisonment for three months. However, he has been acquitted of the offence punishable under Section 342.

3. The child witness PW2 Sushma has vividly delineated the entire incident which culminated with the death of her mother and sister. She has stated that she was present in the house along with her parents and siblings. Her father bolted the door from the inside and attacked her mother with a sickle on her neck. He similarly assaulted Rekha, who was ten years old at that time. PW2 has stated that the Appellant inflicted injuries on her back and her left wrist with the sickle.

Her brother Sagar was also assaulted on the neck and back by the Appellant. She has deposed that when her paternal grandfather, PW4, requested her father to open the door, he did so. The grandfather PW4 on witnessing the scene of offence, told her father to kill her and her brother and that he would ensure his son's release by spending Rupees Two lakhs. She has stated that her grandfather then left and she followed him stealthily to the house of PW3. She has further deposed that on her way she saw her father i.e. the Appellant hit PW3 with a stone near his ear and thereafter she saw him pelting stones at the father of PW3. She reached PW3's house and remained there till the Police Patil interrogated her. She and her brother were removed to the General Hospital at Sangli by her maternal uncle Bayaji. She has identified the sickle produced before the Court to be the weapon used by the Appellant. The defence has not been able to shake the testimony of this witness at all in cross-examination. The suggestion put to her that she had been tutored by her maternal uncle and maternal grandfather has been negatived by the girl. The cross-examination of this witness is detailed and all attempts made to make her deviate from her story, have failed. In our opinion, the learned Sessions Judge was right in accepting the evidence of the child witness. Her testimony has rightly been accepted as it would be difficult for a child of tender years who had

lost her mother and sister in tragic circumstances to depose falsely against her father. We see no reason why the evidence of PW2 should not be relied upon.

4. This evidence of PW2 has been corroborated in all material particulars by PW1 who was the Police Patil of the village. He was present when the land agreed to be sold was being measured. He had heard the children cry out from the house of the Appellant. He has stated that when the Appellant's father had informed those present in the house of PW3 that two persons had died, he rushed to the nearest police station along with the victims' brother and another person. When the police arrived at the spot, the Appellant came out of the house and they found that his son was injured on his neck and that his wife and daughter were dead. Therefore, the testimony of this witness amply corroborates the deposition of PW2.

5. PW3 who is the son of the purchaser of the land has also spoken about the incident and corroborated the evidence of PW1 and PW2. He has further deposed to the effect that when the Appellant came out of his house, he was carrying a blood stained sickle. He has also stated that his father was hit on the chest with stone by the Appellant. When PW3 tried to help his father, he was hit by a stone on the temple by the Appellant. This

witness has also stated that the agreed amount had been paid by him to the victim. He has denied that the victim's father and brother were responsible for the sale of the land and has stated that it was PW4 who wanted to sell his land.

6. PW4 is the father of the Appellant. He has been declared hostile. He has denied the incident and each of the circumstances pointing to the culpability of his son, the Appellant. However, it is on the basis of his complaint, made on 29th November 1998, that the Appellant was arrested. PW5 has drawn up the spot panchanama and inquest panchanama. PW6 is the Investigating Officer.

7. We have scrutinised the records and the evidence before us with the assistance of the learned Advocate appointed for the Appellant and the learned Additional Public Prosecutor. We find no reason to differ from the findings of the Sessions Judge. Merely because the statement of PW2 was recorded after a period of six days from the incident, it would not be fatal to the prosecution's case. The evidence of PW2, who was an eye witness to the gruesome incident, is believable and acceptable. In these circumstances, we find that the prosecution's case has been established and the Sessions Court has rightly convicted the Appellant under Section

302 for the heinous murders of Vimal, his wife and Rekha, his daughter. He has also been rightly convicted under Sections 324 and 337. The judgment of the Sessions Court is, therefore, upheld and the Appeal is dismissed.

8. The accused was represented before us by an Advocate appointed. The learned Advocate has taken adequate efforts to place the entire case of the accused before us. We, therefore, quantify the fees payable to the learned Advocate appointed for the appellant at Rs.1,000/-.

(V.G. PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)